

other instrument, such Holder shall, for all purposes under the Plan, be deemed to have surrendered such instrument.

m. Fractional Shares

No fractional shares of New Common Stock, Post-Termination Securities or Conversion Common Stock shall be distributed. The actual issuance shall reflect a rounding up (in the case of .5000 or more than .5000) of such fraction to the nearest whole New Common Stock, Post-Termination Securities or Conversion Common Stock share or a rounding down of such fraction (in the case of .4999 or less).

8. Resolution of Disputed, Contingent and Unliquidated Claims and Interests

a. Objection Deadline; Prosecution of Objections

No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Debtor or Reorganized XO, as the case may be, shall file objections to Claims and Interests with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims and Interests to which objections are made, provided, however, that the Debtor and Reorganized XO shall not object to Claims Allowed pursuant to the Plan. Nothing contained herein, however, shall limit Reorganized XO's right to object to Claims or Interests, if any, filed or amended after the Claims Objection Deadline. The Debtor and Reorganized XO shall be authorized to, and shall, resolve all Disputed Claims or Disputed Interests by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction the validity, nature and/or amount thereof.

b. Reserve for Disputed Claims.

- i. *Establishment of Reserves.* Within ten (10) Business Days after the Effective Date, Reorganized XO shall establish a reserve (the "Disputed Claims Reserve") on account of the Disputed Claims in Classes 5 (General Unsecured Claims) and 6 (Senior Note Claims). Reorganized XO shall fund the Disputed Claims Reserve with (i) under the FL/Telmex Plan, all of the shares of the Note Common Stock and Cash or, (ii) under the Stand-Alone Plan, the New Warrants, in each case, that all Holders of Disputed General Unsecured Claims and Disputed Senior Note Claims would receive if all Disputed General Unsecured Claims and Disputed Note Claims were Allowed Claims immediately prior to the Distribution Date in an amount equal to the Face Amounts of such Disputed Claims. For purposes of calculating the distributions on the Distribution Date to Holders of Allowed Claims in Classes 5 (General Unsecured Claims) and 6 (Senior Note Claims) under Sections 3.3(c) and (d) of the Plan (including, without limitation, the calculation of General Unsecured Claim Portion and Senior Note Claim Portion), all Disputed General Unsecured Claims and

Disputed Note Claims shall be deemed to be Allowed Claims in amounts equal to the Face Amounts of such Disputed Claims.

- ii. *Distribution Upon Allowance of a Disputed Claim.* When a Disputed General Unsecured Claim or Disputed Senior Note Claim becomes an Allowed Claim, Reorganized XO shall distribute, on or as soon as practicable thereafter, to the Holder of such newly Allowed Claim from the Disputed Claims Reserve a distribution of (i) under the FL/Telmex Plan, the Note Common Stock and Cash equal to the number of shares and amount of Cash or (ii) under the Stand-Alone Plan, the New Warrants, if any, in each case, that would have been distributed to such Holder with respect to such Claim had such Claim been an Allowed Claim on the Distribution Date based on the Face Amount of such newly Allowed Claim; provided, however, that (i) under the FL/Telmex Plan, the aggregate number of shares and Cash distributed on account of the newly Allowed Claim may not exceed the total number of shares of Note Common Stock and amount of Cash reserved with respect to such Claim in the Disputed Claims Reserve and (ii) under the Stand-Alone Plan, the aggregate number of New Warrants distributed on account of the newly Allowed Claim may not exceed the total number of New Warrants reserved with respect to such Claim in the Disputed Claims Reserve.
- iii. *Final Distribution.* When all Disputed General Unsecured Claims and all Disputed Note Claims have become Allowed Claims or have otherwise been resolved by a Final Order and the applicable distributions have been made on account of such newly Allowed Claims in accordance with Section 7.2(b) of the Plan, (i) under the FL/Telmex Plan, any and all shares of Note Common Stock and Cash and (ii) under the Stand-Alone Plan, any and all New Warrants, remaining in the Disputed Claims Reserve (the "Remaining Reserve") shall be distributed, on or as soon as practicable thereafter, to the Holders of the Allowed General Unsecured Claims and Allowed Senior Note Claims as follows: (x) each Holder of an Allowed General Unsecured Claim shall receive its pro rata share (based on a fraction, the numerator of which is the Face Amount of the Allowed General Unsecured Claim and the denominator of which is the aggregate Face Amounts of all Allowed General Unsecured Claims) of the General Unsecured Claim Portion of the Remaining Reserve; and (y) each Holder of an Allowed Senior Note Claim shall receive its pro rata share (based on a fraction, the numerator of which is the Face Amount of the Allowed Senior Note Claim and the denominator of which is the aggregate Face Amounts of all Allowed Senior Note Claims) of the Senior Note Claim Portion of the Remaining Reserve.

c. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim or Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by Final Order and the Disputed Claim or Disputed Interest, or some portion thereof, has become an Allowed Claim or Allowed Interest.

9. Means for Implementation of the Plan

a. Continued Corporate Existence and Vesting of Assets in Reorganized XO

After the Effective Date, Reorganized XO shall continue to exist in accordance with the law in the jurisdiction in which it is incorporated and pursuant to its Certificate of Incorporation and Bylaws in effect prior to the Effective Date, except to the extent such Certificate of Incorporation and Bylaws are amended under the Plan. Except as otherwise provided in the Plan, on and after the Effective Date, all property of the Estate of the Debtor, including all claims, rights and causes of action and any property acquired by Debtor or Reorganized XO under or in connection with the Plan, shall vest in Reorganized XO free and clear of all Claims, liens, charges, other encumbrances and Interests other than (a) the liens of Holders of Other Secured Claims pursuant to applicable constituent documents and (b)(i) under the FL/Telmex Plan, the liens of the Senior Secured Lenders under the Amended and Restated Senior Credit Facility or (ii) under the Stand-Alone Plan, the liens under the Exit Facility and the New Junior Secured Loans. On and after the Effective Date, Reorganized XO may operate its business and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, Reorganized XO may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

b. Corporate Governance, Directors and Officers and Corporate Action

i. Certificates of Incorporation and Bylaws.

- (1) *Under the FL/Telmex Plan:* The Certificate of Incorporation and Bylaws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan, the Bankruptcy Code, and the Investment Agreement and shall include, among other things, (i) pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) a provision under which Reorganized XO shall opt out of the provisions of Section 203 of the Delaware General Corporate Law; and (iii) authorization to issue New Class A Common Stock, New Class C Common

Stock, New Class D Common Stock, New Class E Common Stock, (including future issuances of Conversion Common Stock) in amounts not less than the amounts necessary to permit the distributions thereof required or contemplated by the Plan, the Investment Agreement and the Management Stock Purchase Agreement. After the Effective Date, Reorganized XO may amend and restate the Amended Certificates of Incorporation and Bylaws as permitted by applicable law.

- (2) *Under the Stand-Alone Plan:* The Certificate of Incorporation and Bylaws of the Debtor shall be amended as necessary to satisfy the provisions of the Plan and the Bankruptcy Code, be in a form reasonably acceptable to the Administrative Agent and be consistent with the terms and conditions of the Stand-Alone Term Sheet and any related agreements and shall include, among other things, (i) pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorization to pay any amounts that are due or may become due pursuant to the Retention Bonus Plan; and (iii) authorization to issue the New Reorganization Common Stock pursuant to or upon exercise of the Post-Termination Securities, in amounts not less than the amounts necessary to permit the distribution thereof required or contemplated by the Plan. After the Effective Date, Reorganized XO may amend and restate the Amended Certificates of Incorporation and Bylaws as permitted by applicable law.

ii. *Directors and Officers of Reorganized XO.*

- (1) Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, as of the Effective Date, the initial officers of Reorganized XO shall be the officers of the Debtor on the Petition Date (or as otherwise agreed to by the Investors, if applicable, prior to the Confirmation Date).
 - (a) *Under the FL/Telmex Plan.* On the Effective Date, the Board of Directors of Reorganized XO will consist of up to twelve (12) members. The Forstmann Little Investors have the right to nominate ten (10) directors to Reorganized XO's Board of Directors, including up to five (5) independent directors nominated by Telmex to

Reorganized XO's Board of Directors. XO's current Chairman of the Board and Chief Executive Officer will continue to serve Reorganized XO in those capacities. XO's Bylaws will be amended pursuant to the terms of the Investment Agreement. Moreover, Reorganized XO's Certificate of Incorporation shall be amended, as required by the terms of the Investment Agreement, including to opt out of the provisions of Section 203 of the Delaware General Corporation Law. Pursuant to section 1129(a)(5) of the Bankruptcy Code, XO will disclose, on or prior to the Confirmation Date, the identity and affiliations of any other person proposed to serve on the initial Board of Directors of Reorganized XO, and, to the extent such person is an insider other than by virtue of being a director, the nature of any compensation for such person. The classification and composition of the Board of Directors of Reorganized XO shall be consistent with its Amended Certificate of Incorporation and Bylaws. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the Amended Certificate of Incorporation and Bylaws, the other constituent documents of Reorganized XO, and applicable law. The initial officers of XO shall be the officers of XO as of the Petition Date or such other officers as shall be reasonably acceptable to the Investors to the extent provided by the Investment Agreement.

- (b) *Under the Stand-Alone Plan:* On the Effective Date, the Board of Directors of Reorganized XO will consist of seven (7) members designated as follows: (i) two by Reorganized XO's senior management and (ii) five by the Holders of Allowed Senior Secured Lender Claims, provided that if the Rights Offering yields a more than \$150 million, then one member of the Board nominated by the Holders of Senior Secured Lender Claims shall resign and the remaining directors shall elect to fill the vacancy an individual nominated by one or more of the parties who exercised Rights. The Amended Certificate of Incorporation and Bylaws shall reflect the foregoing provisions.

- iii. *Corporate Action.* On the Effective Date, the adoption of the Amended Certificates of Incorporation and Bylaws or similar constituent documents, the selection of directors and officers for Reorganized XO, and all other actions contemplated by the Plan and the Investment Agreement shall be authorized and approved in all respects (subject to the provisions of the Plan). All matters provided for in the Plan involving the corporate structure of the Debtor or Reorganized XO, and any corporate action required by the Debtor or Reorganized XO in connection with the Plan, shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders or directors of the Debtor or Reorganized XO. On the Effective Date, the appropriate officers of Reorganized XO and members of the Board of Directors of Reorganized XO shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan in the name of and on behalf of Reorganized XO.
 - iv. *Corporate Structure.* On the Effective Date (a) the Operating Subsidiaries may merge with or transfer assets to other Operating Subsidiaries, and (b) if the Stand-Alone Event occurs, a new corporation may be formed ("New XO"), and XO or Reorganized XO, as the case may be, may merge with and into New XO or a subsidiary of New XO or may transfer all of its assets (including the Operating Subsidiaries) to New XO or wholly owned subsidiaries of New XO; and the stock and securities to be issued under the Plan would be issued by New XO, and XO would dissolve.
- c. Issuance of New Securities
- i. *Under the FL/Telmex Plan:* On or as soon as reasonably practicable after the Effective Date, Reorganized XO, in accordance with the terms of the Plan, shall issue and exchange, as necessary, for the benefit of Holders of the General Unsecured Claims and Note Claims, such shares of New Common Stock as required by Sections 3.3(b) and (c) of the Plan. Also on the Effective Date, Reorganized XO shall issue to the Investors the New Investor Common Stock pursuant to the terms of the Investment Agreement. Further, on the Effective Date, Reorganized XO shall issue the Management Common Stock pursuant to the terms of the Management Stock Purchase Agreement. The issuance of the New Common Stock and the Conversion Common Stock is authorized without the need for any further corporate action.

- ii. *Under the Stand-Alone Plan:* On or as soon as reasonably practicable after the Effective Date, Reorganized XO, in accordance with the terms of the Plan, shall (a) commence the Rights Offering as contemplated by the Stand-Alone Term Sheet and issue for the benefit of the persons exercising Rights such shares of New Reorganization Common Stock as are purchased upon exercise of the Rights and (b) issue and exchange, as necessary, for the benefit of Holders of the General Unsecured Claims and Note Claims, such New Warrants as required by Sections 3.3(b)(ii) and (c)(ii) of the Plan. Also on the Effective Date, Reorganized XO shall issue to Holders of Senior Secured Lender Claims the New Reorganization Common Stock as required by Section 3.3(a)(ii) of the Plan. The issuance of the New Reorganization Common Stock (including, without limitation, respecting the foregoing, the New Options under the Management Incentive Program and the Rights Offering) is authorized without the need for any further corporate action.

d. Amended and Restated Senior Credit Facility.

Under the FL/Telmex Plan, on the Effective Date, Reorganized XO is authorized and directed to execute and deliver the Amended and Restated Senior Credit Facility and such other agreements and instruments contemplated thereby.

10. Treatment of Executory Contracts and Unexpired Leases

a. Assumption of Executory Contracts and Unexpired Leases

On the Effective Date, all executory contracts or unexpired leases of Reorganized XO, except for any executory contract or unexpired lease that (i) has been assumed or rejected prior to the Confirmation Date or (ii) is identified on Schedule 8.1 of the Plan, which Schedule shall be in form and substance acceptable to the Investors to the extent required by the Investment Agreement and may be amended prior to the Confirmation Date, will be deemed assumed in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. All executory contracts or unexpired leases of Reorganized XO set forth on Schedule 8.1 shall be deemed rejected pursuant to sections 365 and 1123 of the Bankruptcy Code and the Holder of any Rejection Claim shall file a proof of claim within thirty (30) days after the Confirmation Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed and/or assigned pursuant to Article VIII of the Plan shall remain in full force and effect and be fully enforceable by Reorganized XO in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law. To the extent applicable, all executory contracts or unexpired leases of Reorganized XO assumed pursuant to Section 8.1 of the Plan shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control" however such term

may be defined in the relevant executory contract or unexpired lease and any required consent under any such contract or lease shall be deemed satisfied by the confirmation of the Plan.

b. Cure of Defaults of Assumed Executory Contracts and Unexpired Leases

Any monetary amounts by which each executory contract and unexpired lease to be assumed pursuant to the Plan is in default shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the later of (i) the Effective Date, (ii) as due in the ordinary course of business or (iii) on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (1) the amount of any cure payments, (2) the ability of Reorganized XO or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption.

c. Indemnification of Directors, Officers and Employees

The Director and Officer Claims, to the extent applicable, shall be deemed and treated as Claims arising under executory contracts that are assumed by Reorganized XO pursuant to the Plan and sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. In addition, to the extent such Claims are not included under assumed executory contracts, the Debtor's obligations with respect to such Claims shall be assumed by Reorganized XO and shall survive Unimpaired and unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

d. Compensation and Benefit Programs

Except as otherwise expressly provided hereunder, all Employment Contracts¹⁵ are treated as executory contracts under the Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code excluding, however, any Employment Contract or portion thereof relating to Other Old Equity, such as those relating to the NEXTLINK Communications, Inc. Change of Control Retention Bonus and Severance Pay Plan, which plan the Company has already terminated. All Employment Contracts assumed pursuant to Section 8.4 of the Plan shall be deemed modified such that the transactions contemplated by the Plan shall not be a "change of control", however such term may be defined in the relevant Employment Contracts.

¹⁵ The definition of Employee Contracts expressly excludes the Concentric Network Corporation Executive Continuity Agreements identified on Exhibit B to the Plan. These contracts are not assumed under the Plan.

11. Compromise and Settlement of Shareholder Lawsuit.

The Plan contemplates the compromise and settlement of the Shareholder Lawsuit pursuant to the terms of the Shareholder Stipulation. In connection with confirmation of the Plan, the Debtor shall file a motion seeking approval of the Shareholder Stipulation by the Bankruptcy Court. The Shareholder Stipulation provides, among other things, that Holders of Old Class A Common Stock Interests shall be entitled to receive certain consideration as a gift from the Holders of the Senior Secured Lender Claims in exchange for settling the Shareholder Lawsuit. The Shareholder Stipulation provides, among other things, the following consideration to the Holders of Old Class A Common Stock Interests:

a. If the FL/Telmex Plan is consummated, the Holders of the Allowed Senior Secured Lender Claims waive their right to receive the first twenty million dollars (\$20,000,000) in cash interest otherwise payable to them pursuant to Section 3.3(a)(i) of the Plan and instead such amount shall be paid into escrow on behalf of the Holders of Old Class A Common Stock Interests within seven (7) days after the later of (x) the Effective Date and (y) the date such interest would otherwise be paid under the Plan; provided, that such amount, less any taxes, expenses, costs and attorneys' fees and expenses awarded by the court in which the Shareholder Lawsuit is pending or other court of competent jurisdiction shall be distributed on the Distribution Date or as soon thereafter as is practicable to Holders of Old Class A Common Stock Interests.

b. Under the Stand-Alone Plan,

- i. In the event of a Successful Recovery in connection with any Investor Litigation not involving the receipt of Other Consideration by any party, XO or Reorganized XO, as applicable, shall pay or cause to be paid into escrow on behalf of Holders of Old Class A Common Stock Interests within seven (7) business days after XO's receipt of such Successful Recovery or any cash proceeds out of enforcing such Successful Recovery: (a) thirty-three and one-third percent (33 1/3%) of such Successful Recovery, up to a maximum Successful Recovery of sixty million dollars (\$60,000,000), for a maximum payment to Holders of Old Class A Common Stock Interests of twenty million dollars (\$20,000,000); and in addition (b) three percent (3%) of the gross value of any such Successful Recovery in excess of sixty million dollars (\$60,000,000) (collectively, the "Successful Recovery Fund"). The administration, distribution and tax payments on the Successful Recovery Fund shall be handled in the same manner as set forth above in connection with the Settlement Fund and distributions therefrom shall be made to Holders of Old Class A Common Stock Interests.
- ii. In the event that a Successful Recovery involves the receipt of Other Consideration by any party, then two independent investment advisors selected by Plaintiffs and XO, respectively,

will agree on a value for the Successful Recovery. If no agreement can be reached between these two investment advisors, such advisors shall mutually agree upon and appoint a neutral advisor to value the Successful Recovery. After the agreement or neutral determination of the value of the Successful Recovery, any amounts owed to Holders of Old Class A Common Stock Interests shall be promptly liquidated (or, at XO's or Reorganized XO's election, the value thereof determined as described above shall be paid in cash by XO or Reorganized XO) and the proceeds of such liquidation or the value of such Other Consideration, as the case may be, together with that portion of the Successful Recovery that does not involve Other Consideration, shall be distributed in the same manner and to the same persons or entities as any cash consideration portion of a Successful Recovery; provided, however, that the amounts payable to Holders of Old Class A Common Stock Interests in respect of any Other Consideration portion of a Successful Recovery shall in no event exceed twenty million dollars (\$20,000,000).

All Holders of Claims against and Interests in XO shall be bound by the terms of the Shareholder Stipulation.

12. Confirmation and Consummation of the Plan

a. Conditions to Confirmation

The Bankruptcy Court shall not enter the Confirmation Order unless and until the Confirmation Order is reasonably acceptable in form and substance to the Debtor, the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement).

b. Conditions to Effective Date.

The following are conditions precedent to the occurrence of the Effective Date:

- i. The Confirmation Order confirming the Plan, as such Plan may have been modified, shall have been entered and become a Final Order in form and substance reasonably acceptable to the Debtor, the Administrative Agent, and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement) and shall provide that:
 - (1) the Debtor and Reorganized XO are authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, indentures and other agreements or documents to be executed and/or delivered in connection with the Plan;

- (2) the provisions of the Confirmation Order are nonseverable and mutually dependent; and
 - (3) (x) under the FL/Telmex Plan, Reorganized XO is authorized to issue New Common Stock and is authorized to enter into the Amended and Restated Senior Credit Facility and other such agreements and instruments contemplated thereby or (y) under the Stand-Alone Plan and the Debtor files the Stand-Alone Notice with the Bankruptcy Court, Reorganized XO is authorized to issue the Post-Termination Securities and is authorized to enter into the Exit Facility and such other agreements and instruments contemplated by the Stand-Alone Term Sheet.
- ii. The following agreements or instruments, in form and substance reasonably satisfactory to Reorganized XO, the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement) and the Administrative Agent, shall be in full force and effect or shall become effective concurrently with the transactions contemplated on the Effective Date, and, if applicable, all conditions precedent contained therein shall have been satisfied:
- (1) If a Termination Even has not occurred, the Amended Certificates of Incorporation and Bylaws of Reorganized XO;
 - (2) If a Termination Even has not occurred, the Amended and Restated Senior Credit Facility and all similar documents provided for therein or contemplated thereby (to the extent required by the Investment Agreement);
 - (3) If a Termination Even has not occurred, the Management Stock Purchase Agreement and the ancillary agreements contemplated thereby, to the extent that the transactions contemplated by the Investment Agreement are to be consummated;
 - (4) If a Termination Even occurs and the Debtor files the Stand-Alone Notice, agreements and any other instruments that evidence the New Junior Loans, the Post-Termination Securities, the Exit Facility, if applicable, and such other agreements and instruments, to the extent required by the Stand-Alone Term Sheet.

- iii. The Amended Certificates of Incorporation and Bylaws of Reorganized XO, as necessary, shall have been filed with the appropriate authority in accordance with such jurisdiction's corporation laws.
- iv. All actions, documents and agreements necessary to implement the Plan shall have been effected or executed and shall be reasonably acceptable to the Administrative Agent and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement).
- v. The new Board of Directors of Reorganized XO shall have been appointed.
- vi. If a Termination Event has not occurred, the Investors shall have made the Investment as required by the Investment Agreement.
- vii. If a Termination Event has not occurred, to the extent required by the Investment Agreement, all conditions precedent to the closing of the transactions under the Investment Agreement shall have been satisfied or waived in accordance with the terms thereof.
- viii. If a Termination Event occurs and the Debtor files the Stand-Alone Notice with the Bankruptcy Court, all conditions precedent to closing the Exit Facility (other than the occurrence of the Effective Date) shall have been satisfied or waived.
- ix. The Bankruptcy Court shall have approved the Shareholder Stipulation and all other conditions to the effectiveness of the Shareholder Stipulation shall have been satisfied.

c. Waiver of Conditions.

Each of the conditions set forth in Section 9.2 of the Plan may be waived in whole or in part by the Debtor (and with the prior written consent of the Administrative Agent which cannot be unreasonably withheld and, if a Termination Event has not occurred, the Investors (to the extent required by the Investment Agreement)) without any other notice to parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor or Reorganized XO regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Debtor or Reorganized XO). The failure of the Debtor or Reorganized XO, the Investors (to the extent required by the Investment Agreement) or the Administrative Agent to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

d. Consequences of Non-Occurrence of Effective Date

If the Effective Date does not occur prior to March 15, 2003, or by such later date, after notice and hearing, as is proposed by the Debtor, then upon motion by the Debtor and upon notice to such parties in interest as the Bankruptcy Court may direct, the Debtor will seek an order of the Bankruptcy Court vacating the Confirmation Order; provided, however, that the Debtor shall not be precluded from seeking to vacate the Confirmation Order prior to such date; provided, further, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if the Effective Date occurs before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to Section 9.4 of the Plan, (a) the Plan shall be null and void in all respects; and (b) any settlement of Claims and Interests provided for hereby shall be null and void without further order of the Bankruptcy Court.

13. Effect of Plan Confirmation

a. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, and their respective successors and assigns, including, but not limited to, Reorganized XO.

b. Discharge of Claims and Termination of Interests

- i. Except as provided in the Confirmation Order, pursuant to section 1141(d) of the Bankruptcy Code, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for, and in complete satisfaction, discharge and release of, all Claims and termination of all Interests, including any interest accrued on Claims from the Petition Date. Except as provided in the Confirmation Order or the Plan, Confirmation shall (a) discharge the Debtor from all Claims and other debts that arose before the Confirmation Date and all debts of the kind specified in section 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based on such debt is filed or deemed filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the Holder of a Claim based on such debt has accepted the Plan; and (b) terminate all Interests and other rights of equity security holders in the Debtor; provided, however, all obligations under the Senior Credit Facility shall survive except to the extent expressly replaced by the Amended and Restated Senior Credit Facility.
- ii. As of the Confirmation Date, except as provided in the Plan or the Confirmation Order, all entities shall be precluded from asserting against the Debtor, Reorganized XO, their successors or their property, any other or further claims, debts, rights, causes of action, liabilities or equity interests based upon any act, omission,

transaction or other activity of any nature that occurred prior to the Confirmation Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such claims and rights of equity security holders in the Debtor, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtor at any time to the extent that such judgment relates to a discharged Claim or Interest.

c. Injunction

- i. Except as otherwise provided in the Plan, entities who have held, hold or may hold Claims against or Interests in the Debtor are (i) permanently enjoined from taking any of the following actions against the Estate or any of its property on account of any such Claims or Interests and (ii) permanently enjoined from taking any of the following actions against the Debtor, Reorganized XO, or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; (D) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of the Plan.
- ii. By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the injunctions set forth in the Plan.

d. Releases

- i. *Releases by the Debtor.* As of the Effective Date, the Debtor and Reorganized XO, in their individual capacities and as debtor in possession, will be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities (other than the rights of the Debtor or Reorganized XO to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents

delivered thereunder) whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, Reorganized XO, the parties released pursuant to Section 10.4 of the Plan, the Chapter 11 Case, or the Plan or the Disclosure Statement, and that could have been asserted by or on behalf of the Debtor or its Estate or Reorganized XO, whether directly, indirectly, derivatively or in any representative or any other capacity, against (i) the current and former directors, officers and employees of the Debtor (other than for money borrowed from or owed to the Debtor or its subsidiaries by any such directors, officers or employees as set forth in the Debtor's books and records) and the Debtor's agent, and Professionals, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals of the foregoing; (ii) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons) and professionals of the foregoing; and (iii) in the event the Investment Agreement is consummated, the Forstmann Little Entities and Telmex, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals of the foregoing.

ii. **Releases by Holders of Claims and Interests.**

- (1) Under the FL/Telmex Plan, on the Effective Date, all holders of Claims and Interests, in consideration for the obligations of the Debtor and Reorganized XO under the Plan, the obligations of the Investors under the Investment Agreement, and the Cash, New Common Stock and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, and each entity (other than the Debtor) that has held, holds or may hold a Claim or Interest, as applicable, will be deemed to forever release, waive and discharge all claims, demands, debts, rights, causes of action or liabilities (other than the right to enforce the Debtor's or Reorganized XO's obligations under the

Plan, and the contracts, instruments, releases, agreements and documents delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement against (i) Forstmann Little Entities, (ii) Telmex, (iii) the current and former directors, officers and employees of the Debtor, (iv) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent and (v) the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons), and Professionals of the foregoing. The releases and injunctions provided in Sections 10.4, 10.5 and 10.6 of the Plan are an integral part of the Plan and are supported by the consideration provided hereunder and under the Investment Agreement.

- (2) Under the Stand-Alone Plan, on the Effective Date, (i) each Holder of a Claim or Interest that voted to accept the Plan and (ii) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims and Interests, in consideration for the obligations of the Debtor and Reorganized XO under the Plan, and the New Warrants, New Reorganization Common Stock and other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, and each entity (other than the Debtor) that has held, holds or may hold a Claim or Interest, as applicable, will be deemed to forever release, waive and discharge all claims, demands, debts, rights, causes of action or liabilities (other than the right to enforce the obligations of any party under the Plan, the Investment Agreement, if applicable, and the contracts, instruments, releases, agreements and documents delivered under or in connection with the Plan), whether liquidated or unliquidated, fixed or contingent, matured or

unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, the Plan or the Disclosure Statement against (i) the current and former directors, officers and employees of the Debtor and such Professionals' affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors, and Professionals (but in all events excluding the Investors with respect to any breach by either of them under the Investment Agreement); (ii) the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors and the Administrative Agent, and the respective affiliates and current and former officers, partners, directors, employees, agents, members, shareholders, advisors (including any attorneys, financial advisors, investment bankers and other professionals retained by such persons), and professionals of the foregoing (but in all events excluding the Investors with respect to any breach by either them under the Investment Agreement); and (iii) the Investors excluding with respect to any breach by either of the Investors under the Investment Agreement.

- (3) Notwithstanding anything to the contrary contained herein, except to the extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, the releases provided for in Section 10.4(b) of the Plan shall not release any non-Debtor entity from any liability arising under (x) the Internal Revenue Code or any state, city or municipal tax code, (y) the environmental laws of the United States or any state, city or municipality, or (z) any criminal laws of the United States or any state, city or municipality.

e. **Exculpation and Limitation of Liability**

- i. Under the FL/Telmex Plan, none of the Debtor, Reorganized XO, the Administrative Agents, the Forstmann Little Entities, Telmex, the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors, the Administrative Agents, the entities participating as lenders under the

Amended and Restated Senior Credit Facility, nor any of their respective current or former members, partners, officers, directors, employees, affiliates, agents and advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons) shall have or incur any liability to any Holder of any Claim or Interest for any act or omission in connection with, or arising out of the Debtor's restructuring, the Plan, the Chapter 11 Case, this Disclosure Statement, the Investment Agreement, the Bank Plan Support Agreement, the Amended and Restated Senior Credit Facility, the Stockholders Agreement, any agreements relating to the foregoing or to the transactions contemplated by the Stand-Alone Term Sheet, the solicitation of votes for and the pursuit of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order of the Bankruptcy Court. The foregoing parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

- ii. Under the Stand-Alone Plan, none of the Debtor, Reorganized XO, the Investors (except with respect to any breach by either of the Investors under the Investment Agreement), the Note Trustees, the Senior Secured Lenders, the Official Committee of Unsecured Creditors, the Administrative Agents, nor any of their respective current or former members, partners, officers, directors, employees, affiliates, agents and advisors (including any attorneys, financial advisors, investment bankers and other Professionals retained by such persons), but in all events excluding the Investors with respect to any breach by either of them under the Investment Agreement, shall have or incur any liability to any Holder of any Claim or Interest for any act or omission in connection with, or arising out of the Debtor's restructuring, including without limitation the negotiation and execution of the Investment Agreement or any agreements relating thereto or to the transactions contemplated by the Stand-Alone Term Sheet, the Plan, the Chapter 11 Case, this Disclosure Statement, the Bank Plan Support Agreement, the solicitation of votes for and the pursuit of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all

decisions, actions, inactions and alleged negligence or misconduct relating thereto and all prepetition activities leading to the promulgation and confirmation of the Plan except willful misconduct or gross negligence as determined by a Final Order of the Bankruptcy Court. The foregoing parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

f. **Injunction Related to Releases and Exculpation**

The Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Sections 10.4 and 10.5 of the Plan.

g. **Preservation of Rights of Action; Settlement of Litigation Claims**

- i. *Preservation of Rights of Action.* Except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Debtor and its Estate shall retain the Litigation Claims. Reorganized XO, as the successor in interest to the Debtor and its Estate, may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Litigation Claims.
- ii. *Cancellation of Note Claims held by Company.* Any Note Claims, Old Preferred Stock Interests and Old Common Stock Interests held by the Company shall be deemed cancelled and released and no distributions shall be made on account of such Claims.
- iii. *Settlement of Litigation Claims.* At any time after the Confirmation Date and before the Effective Date, notwithstanding anything in the Plan to the contrary, Reorganized XO may settle any or all of the Litigation Claims with the approval of the Bankruptcy Court pursuant to Bankruptcy Rule 9019.

h. **Termination of Subordination Rights and Settlement of Related Claims**

- i. The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, if any, whether arising by contract, under the Indentures or under general principles of equitable subordination, section 510(b) or 510(c) of the Bankruptcy Code, or otherwise.

- ii. Pursuant to Bankruptcy Rule 9019 and in consideration of the distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims or controversies relating to the subordination rights that a Holder of a Claim may have or any distribution to be made pursuant to the Plan on account of such Claim. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, Reorganized XO, their respective properties, and Holders of Claims and Interests, and is fair, equitable and reasonable.

i. Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

14. Retention of Jurisdiction

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

a. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

b. Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor or Reorganized XO may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

c. Ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan;

d. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

e. Enter such order as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

f. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents including, without limitation, the Shareholder Stipulation;

g. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan or vacate the Confirmation Order;

h. Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), and 1103 of the Bankruptcy Code, provided, however, that from and after the Effective Date, the payment of fees and expenses of Reorganized XO, including counsel fees, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

i. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

j. Hear and determine causes of action by or on behalf of the Debtor or Reorganized XO;

k. Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

l. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;

m. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order including, without limitation, the Shareholder Stipulation;

n. Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

o. Hear and determine all matters related to (i) the property of the Estate from and after the Confirmation Date and (ii) the activities of Reorganized XO;

p. Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;

q. Hear and determine any and all matters, claims or disputes arising from or relating to any contract, instrument, release, agreement, or document executed and delivered under or in connection with the Plan; and

r. Enter an order closing the Chapter 11 Case.

15. Summary of Other Provisions of the Plan

The following paragraphs summarize certain other significant provisions of the Plan. The Plan should be referred to for the complete text of these and other provisions of the Plan.

a. Exemption from Transfer Taxes.

Pursuant to section 1146(c) of the Bankruptcy Code, (a) the issuance, transfer or exchange of notes or equity securities under the Plan; (b) the creation of any mortgage, deed of trust, lien, pledge or other security interest; (c) the making or assignment of any lease or sublease; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, any merger agreements; agreements of consolidation, restructuring, disposition, liquidation or dissolution; deeds; bills of sale; and transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Any transfers from the Debtor to Reorganized XO or otherwise pursuant to the Plan shall not be subject to any such taxes, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, any and all of the foregoing transactions whether taken on or after to the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

b. Cancellation of Notes, Other Old Equity, Old Common Stock and Old Preferred Stock.

On the Effective Date, except as otherwise provided for herein, (i) the Notes, Other Old Equity, Old Common Stock, Old Preferred Stock, and any other notes, bonds (with the exception of surety bonds outstanding), indentures or other instruments or documents evidencing or creating any indebtedness or obligations of, or interests in, the Debtor, except such notes or other instruments evidencing indebtedness or obligations of the Debtor that are Unimpaired, Reinstated, or amended and restated under the Plan (including, if applicable upon implementation of the transactions contemplated under the Investment Agreement, the Senior Secured Lender Claims), shall be cancelled, and (ii) the obligations of the Debtor under any agreements, Indentures or certificates of designation governing the Notes, Other Old Equity, Old Common Stock, Old Preferred Stock, and any other notes, bonds (with the exception of surety bonds outstanding), indentures or other instruments or documents evidencing or creating any

indebtedness or obligations of, or interests in, the Debtor, except such notes or other instruments evidencing indebtedness or obligations of the Debtor that are Unimpaired, Reinstated or amended and restated under the Plan (including, if applicable upon implementation of the transactions contemplated under the Investment Agreement, the Senior Secured Lender Claims), as the case may be, shall be discharged; provided, however, that the Notes and Indentures shall continue in effect solely for the purposes of (i) allowing the Holders of the Senior Note Claims to receive their distributions hereunder, (ii) allowing the Senior Note Trustee to make the distributions to be made on account of the Senior Notes, and (iii) permitting the Senior Note Trustee, as it may choose, to assert any Note Trustee Charging Lien it may have against such distributions for payment of the Note Trustee Fees.

c. Effectuating Documents and Further Transactions.

Each of the Debtor or Reorganized XO, as appropriate, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and any notes or securities issued pursuant to the Plan.

d. Revocation, Withdrawal or Non-Consummation.

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or withdraws the Plan, or if Confirmation or consummation does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other person, (ii) prejudice in any manner the rights of the Debtor or any other person, or (iii) constitute an admission of any sort by the Debtor or any other person.

e. Bar Date for Administrative Claims

The Confirmation Order will establish an Administrative Claims Bar Date for filing Administrative Claims. Holders of Administrative Claims not paid prior to the Effective Date shall submit proofs of Claim on or before such Administrative Claims Bar Date or are forever barred from doing so. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f) will set forth such date and constitute notice of this Administrative Claims Bar Date. The Debtor and Reorganized XO shall have thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) following the Administrative Claims Bar Date to review and object to such Administrative Claims before a hearing for determination of allowance of such Administrative Claims.

f. Payment of Statutory Fees.

All fees payable pursuant to Section 1930 of Title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on the Effective Date.

g. Severability of Plan Provisions.

Subject to the terms and conditions of the Investment Agreement (including, without limitations, Section 5.2(m) thereof), if, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

h. Amendment or Modification of the Plan.

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123 and 1125 of the Bankruptcy Code, the Debtor reserves the right (with the prior written consent of the Investors, to the extent required by the Investment Agreement) to alter, amend or modify the Plan at any time prior to or after the Confirmation Date but prior to the substantial consummation of the Plan. A Holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

i. Plan Supplement.

The Plan Supplement, which shall include certain exhibits, lists, schedules, or documents to be executed in connection with the Plan, shall be filed with the Bankruptcy Court not later than five (5) days prior to the Confirmation Hearing. Upon its filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Interests may obtain a copy of the Plan Supplement upon written request to the Debtor. The documents contained in the Plan Supplement shall be reasonably acceptable to the Investors and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

j. Controlling Documents.

To the extent there is any inconsistency or ambiguity between any term or provision contained in the Plan or the Investment Agreement, on the one hand, and the Disclosure Statement, the Bank Plan Support Agreement or any other agreement or document

executed or delivered in connection therewith, on the other, the terms and provisions of the Plan or Investment Agreement, as applicable, shall control; provided that, to the extent there is any inconsistency or ambiguity between any term or provision contained in the Plan and the Investment Agreement, the terms and provisions of the Investment Agreement shall control.

D. Confirmation and Consummation Procedure

The Bankruptcy Court may confirm an Alternative under the Plan only if it determines that such Plan complies with the technical requirements of Chapter 11, including, among other things, that (a) the Plan has properly classified Claims and Interests; (b) the Plan complies with applicable provisions of the Bankruptcy Code; (c) the Debtor has complied with applicable provisions of the Bankruptcy Code; (d) the Debtor has proposed the Plan in good faith and not by any means forbidden by law; (e) disclosure of "adequate information", as required by Section 1125 of the Bankruptcy Code, has been made; (f) the Plan has been accepted by the requisite votes of all Classes of creditors and Interest Holders (except to the extent that "cramdown" is available under Section 1129(b) of the Bankruptcy Code; (g) the Plan is in the "best interests" of all Holders of Claims or Interests in an Impaired Class; and (h) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of such fees on the Effective Date. Under the Bankruptcy Code, the following steps must be taken to confirm the Plan.

1. The Confirmation Hearing

The Bankruptcy Court has scheduled a hearing on the confirmation of one of the Alternatives under the Plan for August 26, 2002, at 9:30 a.m. At that hearing, the Bankruptcy Court will consider whether such Plan satisfies the various requirements of the Bankruptcy Code, including whether such Plan is feasible and whether such Plan is in the best interests of the Creditors and Holders of Interests in the Debtor. At that time, the Debtor will submit a report to the Bankruptcy Court concerning the votes for acceptance or rejection of such Plan by the parties entitled to vote thereon.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the applicable Alternative under the Plan. Any objection to confirmation of such Plan must be made in writing and filed with the Bankruptcy Court and served on all required parties by the objection deadlines set by the Bankruptcy Court. Unless an objection to confirmation is timely served and filed, it may not be considered by the Bankruptcy Court.

2. Confirmation

a. At the Confirmation Hearing, the Bankruptcy Court will confirm an Alternative under the Plan only if all of the requirements of Section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of either Alternative under the Plan are:

- i. Such Plan complies with the applicable provisions of the Bankruptcy Code.